Supreme Court of the United States

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No

THE SUPERIOR OIL COMPANY,

Petitioner,

v.

THE UNITED GAS IMPROVEMENT COMPANY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

ERRATUM

Page 2 line 7 change "October 31, 1959" to "October 31, 1960."

Respectfully submitted,

H. W. VARNER

Attorney for The Superior Oil Company, Petitioner

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The Superior Oil Company (Superior), Intervener in the proceeding below, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in the below mentioned proceedings on October 31, 1960.

OPINIONS BELOW

The opinion of the Court of Appeals for the Ninth Circuit, entered October 31, 1960, is reported at 283 F. 2d 817. The opinion and the Court's Judgment entered the same day are reprinted herein as Appendix A (*infra*, pp. 1a-17a). The Order of the Federal Power Commission (Commission), issued August 10, 1959 (App. 147),[1] is reported at

[1] References are to page numbers in the Joint Appendix.

22 F.P.C. 252, and the Order Denying Rehearing, issued October 7, 1959, (App. 179), is reported at 22 F.P.C. 653. These Orders were reversed by the Court below. They are reprinted herein for convenience as Appendix B *(infra* pp. 18a-27a).

JURISDICTION

The Opinion and Judgment of the Court of Appeals for the Ninth Circuit were entered on October 31, 1959. Petition For Rehearing was denied on December 7, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1) and Section 19(b) of the Natural Gas Act, 52 Stat. 831 (1938); 15 U.S.C. Sec. 717r(b).

QUESTIONS PRESENTED

1. Does *The Atlantic Refining Company* v. *Public Service Commission*,[2] commonly termed "CATCO" require that the Commission, in determining whether a proposed producer price is out of line, must reject prices certificated in prior orders which are final by reason of no petition for review or because of judicial affirmation, if such prices are equal to prices certificated in other proceedings which are pending on review?

2. Is the presumption of regularity attributable to a final administrative order overcome by the pending review of an unrelated proceeding between different parties involving the same or similar issues?

3. Did the Court below exceed its authority by substituting its discretion for that of the Commission when it held it to be an abuse of discretion for the Commission to consider producer prices in final certificate orders not subject to review for the purpose of de-

[2] 360 U.S. 378 (1959).

termining the producer price "line" within the meaning of this Court's opinion in the CATCO case?

4. Did the Court below exceed its authority in finding, contrary to the finding of the Commission, that a tax reimbursement in the sum of ¼¢ per MCF is relatively substantial in relation to a total proposed price of 23.8¢?

5. Did the Court below err when it held that the Commission had abused its discretion in failing to consider the instant tax reimbursement provision in ascertaining the price line when the Commission opinion explicitly discusses the matter?

6. Did the Court below properly reverse an order of the Federal Power Commission on a ground of error not raised by Petition for Rehearing to said Commission?

STATUTE INVOLVED

The pertinent provisions of the Natural Gas Act, 52 Stat. 821 (1938), as amended by 56 Stat. 83 (1942), 15 U.S.C. §§ 717-717w, are set forth in Appendix C hereto (*infra*, pp. 28a-31a).

STATEMENT OF THE CASE

The decision of the Court below is a misinterpretation of this Court's opinion in Catco. It also conflicts with decisions of this Court and courts of appeals concerning the conclusiveness of final administrative orders and the presumption of regularity accorded all final court decrees and administrative orders.

The Court below reversed an order of the Federal Power Commission, hereinafter called "Commission" for convenience, which issued to Petitioner and The California Company, another independent producer, Certificates of Public Convenience and Necessity authorizing the sale into inter-

state commerce for resale of a gas supply estimated by the purchaser to amount to 636 Billion cubic feet. The Applications for Certificates of Public Convenience and Necessity were filed in conformity with Section 7(c) of the Natural Gas Act[3] after hearing in which not a single one of the purchasing company's 2,000 customers opposed the issuance of the certificates or suggested a conditioning of the proposed prices. The United Gas Improvement Company (UGI), Petitioner below, and New York Public Service Commission (PSC), an Intervener below, each intervened before the Commission, the first because it claims to purchase gas from a vendee of this Petitioner's purchaser, and the second by reason of its zeal for regulation. Neither presented any evidence at the hearing, which was commenced and concluded prior to the CATCO decision of this Court. The evidence showed that the sales contracts involved do not include Favored Nation clauses and that they will not trigger a general price rise or increase the purchaser's rates. The evidence further showed that the proposed initial base price of 21½¢ per MCF was the same as that provided in "30 or 40 or 50 certificates" previously issued by the Commission[4], and that "basically we are looking at

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[3] 15 U.S.C. 717f(c).

[4] Sales to Southern Natural Gas Company at the base price of 21.5 cents per MCF plus 1.3 cents tax reimbursement, 19 F.P.C. 558, from Diverse, Inc., Berkshire Oil Company, Continental Oil Company, Shell Oil Company, Lyons & Logan, California Company, Aluminum Company of America, Grande Corporation, Sohio Oil Company, Tidewater Oil Company, et al, approved April 18, 1958 (prior to the passage of the additional one cent tax described below). Sales to Trunkline Gas Company, 21 F.P.C. 704 (affirmed *Public Service Commission* v. *Federal Power Commission* (CADC 1960), 284 F. 2d 200) from Pan American Petroleum Corporation (three sales), Union Oil Company of California (three sales), Nicklos Oil & Gas Company, at a price of 22 cents per mcf plus tax reimbursement, approved May 22, 1959.
(Footnote continued next page)

a 21½¢ *comparative price in that area*" plus tax reimbursement (App. 14). The evidence additionally shows that the tax reimbursement provision operation in this instance will net to the producer ¼¢ per MCF more than most of the other sales agreements which have been certificated (App. 27); however, the purchaser deemed the acquisition of this supply of gas extremely desirable and beneficial to its customers (App. 7) because it had already received authority from the Commission to purchase gas from two of the three fields involved (App. 6), and therefore would need to construct a very short extension to its overall system (App. 4) to connect this gas. Over and beyond the 30 or 40 or 50 contracts which the witness deemed to create the 21½¢ per MCF plus tax reimbursement "comparative price in the area" specific contracts of Southern Natural Gas Company were referred to which involved the same base price plus tax reimbursement which amounted to 2.175¢ per MFC. These sales had been certificated by the Commission at the time of hearing and were beyond appeal (App. 34 and 35). No objection was made to any of this evidence nor to the witness' conclusion therefrom that same established a comparative price in the area.

(Continued)

Sales to South Georgia Natural Gas Company, 22 F.P.C. 211, from Hunt Oil Company, H. L. Hunt, Earl G. Bateman, Estate of Lydia B. Hunt, Secure Trust Company, The California Company, Placid Oil Company and Gulf Oil Corporation at prices up to 21.5 cents plus 2.175 cents tax reimbursement or 23.675 cents per MCF. This Opinion at Page 219 states that this 23.675¢ price was less than the prices certificated for seven fields in the area and that the price for the Coffee Bay Field gas must be compared with prices up to 23.94¢ per MCF in the area and at Page 220 cites an intrastate sale from Plaquemines Parish at 24.8¢ per MCF including the tax.

Sales to Southern Natural Gas Company from Bayou Postillion by The California Company at 21.5¢ plus tax. 20 F.P.C. 870.

All of the certificates listed above are final certificates not subject to judicial review. They were included in the "30 or 40 or 50 certificates issued" mentioned in Mr. Barnett's testimony (App. 14).

The Presiding Examiner granted a Certificate of Public Convenience and Necessity without price condition April 16, 1959 (App. 135-144). On exceptions the matter was considered by the Commission which with certain modifications adopted the Presiding Examiner's decision. It is interesting to note the following statements in the Commission order, to-wit:

> "Our conclusion is that the requirements laid down by the Supreme Court in the CATCO opinion have been met in this case. In our view, the evidence substantially establishes that the proposed initial price for the sales of The California Company and Superior to United is in the public interest, and the proposed sales are required by the public convenience and necessity. To us, it is clear that there is no warrant or justification for the attachment of any initial price condition in this case.
>
> "Considering whether the price is out of line under CATCO, the facts support the conclusion that Sun's (sic Superior's) price is not out of line on a comparative basis. Much South Louisiana gas is today being sold at 21.5 cents per MFC plus tax reimbursment. • • • Although the price proposed by The California Company and Superior in this case involves greater tax reimbursement than some other 21.5¢ sales, in our opinion this greater tax reimbursement is justified by the factors present, including the size of these reserves, their accessibility to United's pipe line, and the need of United to offer some additional price incentive in order to secure the volumes of gas in question • • • " (App. 150, 151).

UGI petitioned for rehearing by the Commission on the ground that (1) there was no evidence to support the Commission's conclusion that the prices proposed were "in line" under the CATCO criteria or justified on a comparative

basis; (2) that the proposed prices would increase United Gas' purchase cost and the cost of gas to other purchasers in the area, and have a rate impact on consumers; (3) that the record did not establish public need for the gas; and (4) on the ground that the rate standards of the Act had not been properly considered by the Commission in that there was no evidence to show that the proposed sale was at the lowest possible reasonable rate consistent with the maintenance of adequate service in the public interest. The Petition For Rehearing was overruled with the following comment by the Commission:

> "We did consider the element of price in relation to the public demand and need for this gas and the maintenance of adequate service, as our order on its face discloses, and find that although we cannot determine the "just and reasonable" rate for that sale under the rate provisions of the Act, the certification of the price proposed is justified to assure the maintenance of adequate service in the public interest" (App. 180).

The Court below reversed the Commission order on the ground that said Commission abused its discretion in the light of this Court's CATCO opinion in that the Commission in determining the appropriate price line considered prices certificated in orders not under review but involving prices at the same level as those in orders which were being reviewed. The Court below also held that the Commission abused its discretion when it did not deem a tax reimbursement provision which operated to produce ¼ of a Cent per MCF more tax reimbursement than most other contracts to (a) be relatively substantial, and (b) to place an otherwise "in line price" beyond the requirements of public convenience and necessity.

Rehearing of the decision of the Court below was sought but was denied by Order of the Court below dated December

7, 1960. Following denial of the Petition For Rehearing on due request therefor, issuance of the mandate was stayed by the Court below.

REASONS FOR GRANTING WRIT

I. In holding that the Commission abused its discretion in interpreting this Court's opinion in CATCO concerning prices which are "out of line", the Court below erroneously interpreted said opinion to preclude, in determining the price "line", consideration of certificated prices in Commission orders which were final because of judicial affirmation or failure of any party to seek judicial review. This false precedent has been followed in four other decisions by three other courts of appeals[5] with the net effect that certificates of public convenience and necessity authorizing sales of natural gas in interstate commerce for resale to the consuming public of more than one trillion 700 billion cubic feet of reserves in the five proceedings have been vacated. The reserves here involved total 636 billion cubic feet. The public interest requires that this Court consider this matter on certiorari to rectify the errors made in interpreting the CATCO opinion and to elaborate and clarify the Court's decision in CATCO. This is imperative for proper administration of the Natural Gas Act by the Commission

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[5] No. 15461, C.A. D.C., *Public Service Com. of State of New York, Petitioner* v. *Federal Power Com., Respondent*, (Texas Gas Exploration Corporation, Intervener), decided Dec. 7, 1960, No. 6280, C.A. 10 Cir., *The United Gas Improvement Co., Petitioner*, v. *Federal Power Com., Respondent*, (Sunray Mid-Continent Oil Co., et al., Interveners), decided Jan. 23, No. 18112, C.A. 5 Cir., *The United Gas Improvement Co., Petitioner*, v. *Federal Power Commission, Respondent*, (Sun Oil Co., Intervener), decided Feb. 22, 1961, No. 18113, C.A. 5 Cir., *The United Gas Improvement Co., Petitioner*, v. *Federal Power Commission, Respondent*, (The Superior Oil Company, et al., Interveners), decided Feb. 22, 1961.

and in order that the parties subject to said Act, and the reviewing courts, may be advised as to the issues properly involved in a proceeding under Section 7 of said Act[6] where (a) the prices proposed are not greater than prices previously certificated in the area and they will not trigger a general price increase nor increase the purchaser's rates by operation of Favored Nation clauses or otherwise, on the one hand, and (b) where the prices proposed are higher than the existing price line on the other hand. Of course, both (a) and (b) are dependent upon removal of the present uncertainty as to matters of proper consideration in ascertaining the "price line."

The magnitude of the gas supply as to which certificates of public convenience and necessity have been vacated, in the light of the established need for such gas, requires that this vital question to certification be determined by this Court, and with the least possible delay.

II. The Court below correctly recognized that the "out-of-line" referred to in CATCO may be properly "referenced to relevant existing producer prices under which substantial amounts of natural gas move in interstate commerce" (App. 193). But said Court went further to reverse the Commission on the ground that where a number of certificates are under court or commission review, like prices in the same area *though finally certificated* and not currently under review ought to be regarded as "suspect", and cannot be relied upon by the Commission in determining the "out-of-line" unless proved not subject to the infirmities being tested in the pending reviews (App. 195). This means that although an administrative order is final and no longer subject to review under applicable statutes, the price certificated in that order cannot be considered in determining the line of prices under which gas is moving in interstate commerce

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[6] 15 U.S.C.A. 717f.

if other orders with like prices are under review. The qualification concerning "same infirmities" either means nothing as by virtue of its finality the final order has no infirmities, or it presents an insuperable obstacle as it would require inquiry into the record supporting final judgment A and determination that such record is not subject to the objections made in appeal of Case B (which objections are based on record B) in order to determine the propriety of using the price approved in Case A to fix a price line for use in Case C.

This is contrary to the principle of administrative finality and the presumption of regularity accorded final orders. The great bulk of appeals from administrative orders are based on the contention that the record in the particular case does not support the order as entered. The Court below has now held that notwithstanding final administrative determination that the record in a particular case supports as in the public interest a sale at a particular price and the entire proceeding has been finally disposed of, nevertheless the record in that proceeding can be reconsidered in a completely alien proceeding and examined for its sufficiency to support the original order entered in the light of attacks made in still a third proceeding with another record in which a price at the same level is being questioned. Further, that it can serve as no precedent until this has been done. This holding is in conflict with the holdings of this Court and other Courts of Appeals, that even pending appeal the judgment or order is res judicata. *Butler* v. *Eaton* (1891) 141 U.S. 240, 11 S. Ct. 985; *Deposit Bank* v. *Frankfort* (1903) 199 U.S. 499, 24 S. Ct. 154; *Straus* v. *American Publishers Assoc.* (1912 — C.A. 2nd), 201 Fed. 306; *Roberts* v. *Anderson* (1933 — C.A. 10th), 66 F. 2d 874; *Cohen* v. *Superior Oil Corp.* (1937 — C.A. 3rd), 90 F. 2d 810; *Clouatre* v. *Houston Fire and Casualty Co.* (1956 — C.A. 5th) 229 F. 2nd 596; *George H. Lee Co.* v. *Federal Trade Com.* (1940 — C.A. 8) 113 F. 2d 583.

This certainly conflicts with the holding of this Court in *Hynes* v. *Grimes Packing Co.* (1949), Reed J., 337 U.S. 86, 101:

"An administrative order is presumptively valid".

See also: *Pacific States Box & Basket Co.* v. *White* (1935), 296 U. S. 176, 186; *Thompson* v. *Consolidated Gas Utilities Corp.* (1937), 300 U.S. 55, 69; *Martin* v. *Mott* (1827), 12 Wheaton 19, 32-33.

Moreover, this holding of the Court below is inconsistent with its own view in the same opinion where in holding that a denial of intervention from which appeal has not been taken cannot be further inquired into, said:

> "This is true because if not judicially challenged a Commission order excluding participation by others must be taken as correct" (App. 196).

How then can Commission orders not judicially challenged be considered "suspect" as to price or any other issue?

As Mr. Justice Black said in *Federal Trade Com.* v. *Morton Salt Co.* (1948), 334 U.S. 37, 54, where the Court of Appeals had set aside an order of the Trade Commission:

> "The enforcement responsibility of the courts, once a Commission order has become final either by lapse of time or by court approval * * * * * is to adjudicate questions concerning the Order's violation, not questions of fact which support that valid order."

There are two logical effects of the holding of the Court of Appeals. First, that the ubiquitous interveners in certificate proceedings can select the prices to be used in "referencing" the line to be observed under CATCO by the mere seeking of review in which they attack the proposed price. This emasculates the power of decision conferred

upon the Commission by Act of Congress,[7] and places decision in the complete control of one, or more, intervenors. The second result is even more serious. It is that no price in South Louisiana can be considered in determining an applicable price line until after CATCO and Seaboard (*Public Service Com. v. Federal Power Com.* [1959] 361 U.S. 195) are finally disposed of and therefore the Commission must for all practical purposes cease the handling of certificate proceedings pending such disposition. Bearing in mind that the contracts in CATCO were executed in August of 1956 and the applications filed in September of that year, but still final certificates have not been issued, it can be reasonably anticipated that another two years will elapse before finality is reached! Thus the "inordinate delay" noted by this Court in CATCO in the processing of rate cases is now being forced on the Commission in certificate cases. Such inordinate delay will continue unless and until this Court clarifies the meaning and "tenor" of its CATCO decision.

III. The Court of Appeals invaded the province of the Commission in substituting its discretion for that of the Commission. The Court below held that the Commission abused its discretion in failing to condition the proposed producer prices.

This Court said in its CATCO opinion that a proposed price would not be in keeping with the public interest if it is out of line, or if its approval might result in triggering of general price rises or an increase in applicant's existing rates by favored nation clauses or otherwise, and in such case the Commission might attach such conditions as it believes necessary (P. 391). This, of course, was subject to the prior statement that in considering the public convenience and necessity the Commission must evaluate all

[7] The Natural Gas Act, 15 U.S.C. 717, et seq.

factors but must deem price a consideration of prime importance. Here the Commission found and the record established that (1) the price was not out of line, because the base price was the same as many other sales in South Louisiana plus reimbursement here for the tax actually paid (App. 150, 14, 34, 38), (2) there would be no triggering of general price rises because the price was the same as that in many other sales (App. 150, 4), (3) there would be no increase in applicant's existing rates because there were no favored nation clauses in United's contracts and because the slight difference of 2.7 Mills was insignificant (App. 150, 151, 5), (4) that the tax differential was justified as discussed below. The Commission then evaluating these factors and the need of the public for the gas found that this was not a situation which justified a price condition. The Commission based its conclusion on the complex of elements comprising the public convenience and necessity. The Court below rejected the explicit findings of the Commission and substituted its own discretion. This cannot be done consistently with the decisions of this Court. *Gray* v. *Powell* (1941), 314 U.S. 402, 412; *United States* v. *Louisville & Nashville RR Co.* (1914), 235 U.S. 314, 320; *Swayne & Hoyt* v. *United States* (1937), 300 U.S. 297, 304; and *Securities and Exchange Com.* v. *Chenery Corp.* (1947), 332 U.S. 194, 207. In the *Gray* case at Page 412, Mr. Justice Reed said:

> "Where as here a determination has been left to an administrative body, this delegation will be respected and the administrative conclusion left untouched. • • • Although we have here no dispute as to the evidentiary facts, that does not permit a court to substitute its judgment for that of the Director."

In the *Chenery* case, this Court said (207):

> "The facts being undisputed, we are free to disturb the Commission's conclusion only if it lacks *any* rational and statutory foundation." (Emphasis added.)

IV. The Court below erred in reversing the Commission Order on the ground that its failure to consider the price differential resulting from operation of the tax reimbursement clause in this case was an abuse of discretion. The Court said:

> "It follows from this, we believe, that comparative tax reimbursement plans as well as comparative base rates ought to be taken into consideration in determining whether a proposed initial price is out of line. Except where the difference in tax reimbursement features is relatively insubstantial, it is our opinion that failure to take account of such a difference would be an abuse of discretion" (App. 197).

It has long been the practice of the Commission to allow rate changes for changes in taxes paid under contracts which provide for reimbursement for "additional" taxes. Taxes in addition to those existing at the time of contracting are deemed "additional taxes" and the effect of such clauses is relatively standard.

> "In most of the contracts we reimburse about 2 cents or 2.3, and, then, as to additional taxes, over and above 2.3 we reimburse 75 per cent of them." Witness Barnett (App. p. 27).

The amount of the reimbursement depends on the tax situation at the time of contacting and subsequent tax changes.

Superior's contract was dated September 8, 1958. During the period of negotiations, on June 16, 1958, the Governor of Louisiana signed a bill, effective August 1, 1958, adding one cent to the State tax for a total of 2.3 cents

per Mcf.[8] This was the "existing" tax assumed by the purchaser here. Had the bill not become a law during the negotiations, only 75% of the new or additional one cent would have been assumed by the purchaser. The agreement to reimburse this one cent made the gross price here ¼ cent higher than the gross price in the older contracts under the terms of which the cent was a "new or additional" tax of which only 75% was to be reimbursed (App. 14, 24, 26).

The Commission found this reimbursement provision not to be out of line nor substantial (App. 150). Certainly the very language of the Commission order refutes the claim that it failed to consider the effect of the tax reimbursement clause. It said:

> "Although the price proposed by the California Company and Superior in this case involves greater tax reimbursement than some other 21.5-cent sales, in our opinion this greater tax reimbursement is justified by the factors present, including the size of these reserves, their accessibility to United's pipeline, and the need of United to offer some additional incentive in order to secure the volumes of gas in question (App. 150).

Moreover even if the Court below was correct in holding that the tax reimbursement should be considered a part of the price for the gas it had no right to overturn the Commission determination that the matter was non consequential since the Commission had expressly taken account of the differences in relative tax reimbursement provisions. Thus the Court below was in error either because the reimbursement for the new one cent tax was justified or because the Commission did compare it with the reimbursement provisions of other sales in the area and found the one-quarter cent difference to be not "substantial".

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[8] Act 8, 1958, House Bill 303, Amending Title 47, Louisiana Revised Statutes 1950, approved June 16, 1958.

V. The Court of Appeals based its reversal of the Commission Order on two points not raised before the Commission: (1) where a substantial number of certificated prices are under review by court or Commission, like prices in other contracts in the same area must be regarded as suspect except upon evidence and findings that they are not subject to the same infirmities which are being tested in the pending proceedings; and (2) unless the difference in tax reimbursement provisions is relatively insubstantial, the failure to take such difference into account is an abuse of discretion.

A careful reading of the Petition for Rehearing filed by UGI (App. 159) reveals that neither of these points was raised before the Commission as required by Section 19(b) of the Act 52 Stat. 831 (1938); 15 U.S.C. § 717r(b)). Points not submitted to the Commission on Application for Rehearing cannot be considered by the Court of Appeals, either when raised by a brief of one of the parties or sua sponte.

The Courts have rigorously applied the limitation of Section 19(b) of the Act in this respect. This Court held in *Panhandle Eastern Pipe Line Company* v. *Federal Power Commission* (1945) 324 U.S. 635, 649-651, that the failure of the appellant to raise the point of the lack of Commission authority to include producing properties in its rate base in its petition for rehearing precluded the consideration of that point by the reviewing court. This Court again applied the limitation of Section 19(b) to reverse the Court of Appeals which considered an objection sua sponte which had not been raised by petition for rehearing in *Federal Power Commission* v. *Colorado Interstate Gas Company* (1955) 348 U.S. 492, 498-499:

> "Section 19(b) then expressly precludes the consideration by the court of any objection to an order of the Commission unless the objection shall have been urged before the Commission in the application for rehearing. As the court is thus expressly precluded from considering an objection, when, without prior application to the Commission, that objection is presented to the court by the party directly aggrieved, it cannot be assumed that Congress intended to permit the same court to consider the same objection under the same circumstances, sua sponte, merely because the objection was not presented to the court by the party aggrieved."

See also *City of Pittsburgh* v. *Federal Power Commission* (CADC 1956) 237 F. 2d 741, 749; *Magnolia Petroleum Company* v. *Federal Power Commission* (CA 5 1956) 236 F. 2d 785, 789; *Memphis Light, Gas and Water Division* v. *Federal Power Commission* (CADC 1957) 243 F. 2d 628, 632; and *American Power and Light Company* v. *Securities and Exchange Commission* (CA-1 1944) 141 F. 2d 606, 613, aff'd. 329 U.S. 90.

The Court of Appeals clearly exceeded its review authority under the statute in reversing the Commission order on these grounds, and it ruled contrary to the above prior decisions of this Court and other Courts.

CONCLUSION

For all of the foregoing reasons, it is respectfully urged that this petition for a writ of certiorari be granted.

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